



DAI/IFW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Fabrice DIEHL et al.

Examiner: Jennine M. Brown

Serial No.: 10/612,288

Group Art Unit: 1755

Filed: July 3, 2003

Title: HYDROTREATING CATALYST THAT CONTAINS A NITROGEN-
CONTAINING ORGANIC COMPOUND AND ITS USE

**PETITION UNDER 37 C.F.R. § 1.181 TO WITHDRAW THE FINALITY OF THE
OFFICE ACTION MAILED SEPTEMBER 27, 2005**

Mail Stop After Final
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants respectfully petition the group director to withdraw the Finality of the Office Action mailed September 27, 2005.

The unusual facts of this case are as follows:

1. A FINAL Rejection was made on March 18, 2005 but in response to a petition to the group director, the FINAL Rejection was withdrawn in a paper mailed July 15, 2005.

2. In the interim, an amendment was filed on June 7, 2005 and in response to this amendment an Advisory Action was mailed on July 8, 2005 indicating in boxes 6 and 7 that claim 21 is allowed.

3. An Amendment was filed on July 18, 2005 wherein previously allowed claim 21 was maintained and all claims except claims 18 and 19, were made dependent on claim 21. In addition, claim 18 was placed in independent form inasmuch as it was indicated on page 4 of the first FINAL Rejection of March 18, 2005 to contain allowable subject matter. Accordingly, it was believed that the amendment of June 7, 2005 placed all the claims in allowable condition.

4. Nevertheless, in the FINAL Rejection of September 27, 2005, all the claims are rejected on a new reference U.S. 6,540,908 on page 2 and over Lapidus et al. in view of Allain et al. and further in view of another new reference, this time EP 1,043,069.

Inasmuch as the rejection of claim 21 as well as the rejection of claim 18 over newly cited prior art was not necessitated by Applicants' amendments to the claims, it is respectfully submitted that the finality of the Office Action was premature; so there is justification for the withdrawal of the finality of the rejection.

As an incidental matter, the paragraph on page 2 under the heading "Transitional After Final Practice" is not understood inasmuch as it does not relate to the present application.

The Commissioner is hereby authorized to charge the necessary one-month extension fee and any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



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Attorney Docket No.: PET-2092
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